



National Environmental Policy Act

Overview of Policy & Practice

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Outline of Presentation

- Overview of the National Environmental Policy Act (NEPA)
 - Purposes of NEPA
 - NEPA Sections 101 & 102
- Implementation of NEPA
 - NEPA Regulations
 - Agency Roles
 - CEQ, EPA, and Lead & Cooperating Agencies
- Other Environmental Regulations
- Cumulative Impact Analysis



National Environmental Policy Act

- Two parts to NEPA
 - Substantive
 - Sets a national policy for protection of the environment (Section 101)
 - Procedural
 - Establishes environmental decision making process (Section 102)
 - Action forcing procedures which require agencies to prepare a detailed statement of the environmental impacts of the proposed action and its alternatives



National Environmental Policy Act

- **Purposes of NEPA**

- Declare a national purpose to encourage harmony between people & the environment
- Promote efforts to prevent or eliminate damage to the environment & biosphere & stimulate health & welfare
- Enrich the understanding of the ecological system & natural resource important to the nation
- Establish the Council on Environmental Quality



NEPA - Section 101

- Sets out environmental policies which directs the federal government to:
 - Act as trustee of the environment for succeeding generations
 - Assure a safe, healthy, productive & aesthetically and culturally pleasing surroundings
 - Attain the widest range of beneficial uses of the environment without degradation, risk to health & safety, or other undesirable or unintended consequences



Section 101 *continued*

- Preserve important historic, cultural, & natural aspects of our national heritage & maintain an environment which supports diversity & individual choice
- Achieve a balance between population & resource uses that permits high standards of living & a wide sharing of life's amenities
- Enhance the quality of renewable resources & approach the maximum attainable recycling of depletable resources



NEPA - Section 102

- NEPA applies to all federal policies, regulations & laws
- Directs all federal agencies to:
 - Use a systematic interdisciplinary approach in planning and decision making
 - Ensure the integrated use of natural, & social sciences & environmental design arts
 - Take into consideration un-quantifiable environmental amenities & values as well as economic & technical factors in decision-making



NEPA - Section 102

- Prepare an EIS for major federal actions significantly affecting the environment
- Study alternatives for any proposal
- In 1978 US Supreme Court declared that NEPA's mandate was "essentially procedural" & 1980 affirmed that once an agency has made a decision subject to NEPA's requirements, the judicial role is limited to whether the agency has "considered" environmental consequences of its action.



CEQ NEPA Implementing Regulations History

- Prior to 1979, NEPA implementation followed non-binding guidelines limited to EIS preparation which led to different interpretations & inconsistent compliance with NEPA
- '77 President Carter signed EO 11991 which gave CEQ authority to issue binding regulations that cover all procedural provisions of NEPA – Regs issued in '78
- '86 amendment to eliminate the worst case analysis



Summary of Purpose & Objectives

- **40 CFR 1500 - 1508**
- **Binding on all federal agencies including independent regulatory commissions**
- **Stated objectives are to reduce paperwork and delay in environmental review process**
- **Guidelines for federal agencies to develop NEPA compliance regulations**



Summary of Purpose & Objectives

- **Ensure environmental information is available to public officials before decisions are made**
- **Help decision makers understand the environmental consequences & take actions to protect, restore & enhance the environment**
- **Foster agency & public involvement in decisions**



Key Policies of Regulations

- **Integrate NEPA with planning & environmental review procedures for concurrent review**
- **Use NEPA process to identify & assess alternatives that avoid or minimize adverse impacts on the environment**
- **Encourage Public involvement**
- **Apply NEPA early in the planning process**
- **Scoping**



CEQ Regulations & Guidance

- Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500
- Forty Most Asked Questions Concerning CEQ's NEPA Regulations. 46 Fed. Reg. 18028 (March 23, 1981)
- CEQ Memorandum: Scoping Guidance. (April 30, 1981)
- CEQ Memorandum: Guidance Regarding NEPA Regulations. 48 Fed. Reg. 34263 (July 28, 1983)



Elements of EIS's & NEPA Process



NEPA Implementing Regulations

EIS Provisions

- Action forcing device to ensure the provisions of NEPA are integrated into agency programs & actions.
- Provide full discussion of significant environmental impacts.
- Inform decision makers & public of alternatives that avoid and minimize environmental impacts.



NEPA Implementing Regulations EIS Provisions

- **Serves as a means of assessing the impacts of proposed actions rather than justifying decisions already made.**
- **Range of alternatives shall encompass all those considered by the agency decision makers.**
- **Agencies shall not commit resources that would prejudice the selection of alternatives before the final decision.**



Types of EISs

- **Draft EIS**
 - Scope of DEIS determined in scoping process
 - Discuss & disclose all major points on the impacts of alternatives including the proposed action
 - Comments received on DEIS
 - DEIS is rated by EPA



Types of EISs

- **Final EIS**
 - Responds to all comments raised in DEIS.
 - Discusses responsible opposing points of view.
 - Indicates the agency's response to the issues raised.



Types of EISs

- **Supplemental EIS - required if:**
 - **Substantial changes occur in the proposed action**
 - **Significant new circumstances or information on the proposed action or its impacts**
 - **Draft statement is so inadequate as to preclude meaningful analysis**



Decision Document

- **Record of Decision - Document transmitting the agency decision**
 - Clearly states the decision
 - Discuss all alternatives, mitigation & monitoring considered
 - Identifies the environmentally preferable alternative



Record of Decision

- Mitigation and other conditions established in the FEIS and committed to in the ROD shall be implemented by the lead agency or other appropriate consenting agency.
- ROD available upon request.



Basic Elements of an EIS

- **Purpose & Need**
 - Describes the need for action and associated objectives.
 - Determines the scope of alternatives.
 - Discuss P&N broadly enough, but with enough detail, to develop a full range of reasonable alternatives.



Basic Elements of an EIS

- **Executive Summary**
 - Overview of scope of document.
 - Issues and alternatives considered in detail.
 - Areas of controversy (including issues raised by agencies and the public).
 - Issues to be resolved (including the choice among alternatives).



Basic Elements of an EIS

- **Alternatives Analysis (Heart of the EIS)**
 - Rigorously explore and objectively evaluate all reasonable alternatives (comparative form).
 - Explain rationale for alternatives eliminated from detailed study.
 - Include reasonable alternatives not within the jurisdiction of the lead agency.
 - Include the alternative of no action.



Basic Elements of an EIS

- **Affected Environment (Baseline)**
 - Description of the area (study area) to be affected by the alternatives and the proposed action.
 - Resources, ecosystems, human community
 - Data and analyses should be commensurate with the importance of the impact.
 - Focus on important issues.



Basic Elements of an EIS

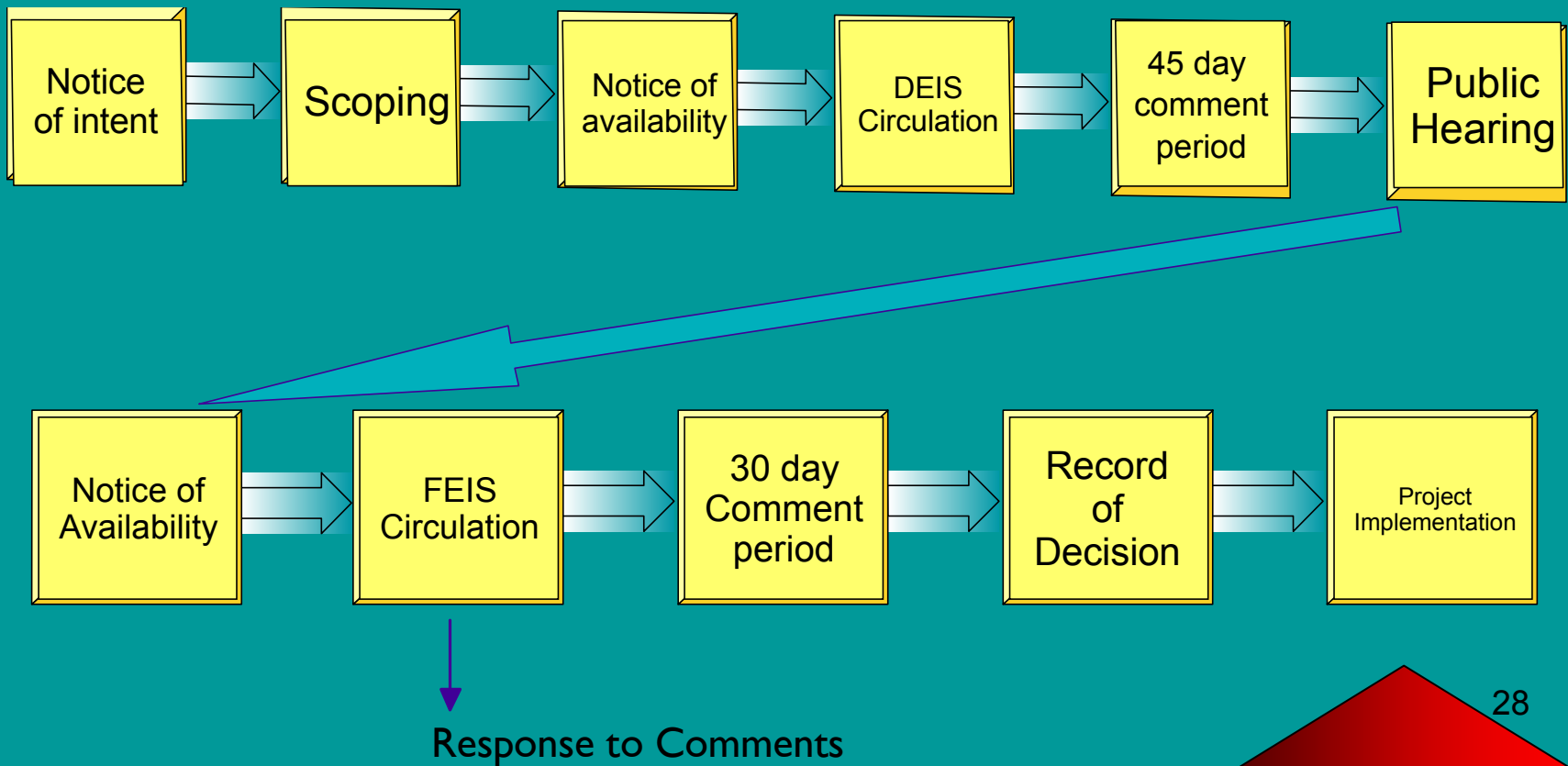
- **Environmental Consequences**
 - **Scientific & analytic basis for alternative analysis**
 - **Discuss environmental impacts of all alternatives**
 - **Discuss unavoidable adverse impacts**



Environmental Consequences

- Should address impacts in terms of cause and effect relationships resulting from:
 - Direct Effects
 - Indirect (Secondary) Effects
 - Cumulative Effects

NEPA EIS Process





NEPA Process- Scoping

- After its decision to prepare an EIS and the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register initiating scoping process.
- Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (meetings, etc.).



NEPA Process - Scoping

- **Determines the scope of issues to be addressed in the DEIS.**
- **Identifies the significant issues related to the proposed action.**
- **Identifies and eliminates from detailed study issues which are not significant.**



NEPA Process - Scoping

- There shall be an early and open process for determining the scope of issues.
- Informal scoping should continue throughout NEPA process.



NEPA Process – EIS Circulation

- Agencies shall circulate the entire DEIS and FEIS (except for certain appendices as provided in regulations)
- EIS circulation & public comment period
 - Draft EIS - 45 days
 - Final EIS – 30 days



EIS Circulation

- If EIS is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:
 - Federal agencies w/ jurisdiction by law or special expertise...
 - The applicant, if any.
 - Any person, organization, or agency requesting the entire environmental impact statement.
 - For FEIS any person, organization, or agency which submitted substantive comments on the draft.



Other NEPA Documents

- **Environmental Assessment (EA)**
 - To determine if a proposal will have a significant impact on the environment → (EIS required)
 - Purpose & Need, Alternatives, and Environmental Consequences are evaluated but with a smaller scope of analysis (including direct, indirect and cumulative effects)
 - If EIS is not required – a Finding of No Significant Impact (FONSI) is issued
- **FONSI is agency decision document for EAs**



Other NEPA Documents

- **Categorical Exclusions**
 - Projects or actions which do not individually or cumulatively have a significant impact on the environment.
 - Categories of actions defined by agencies in their NEPA compliance regulations.
 - A minimal amount of assessment of environmental effects has been completed to ensure that there are no significant impacts.



What is the MATE Streamlining Process Framework?




A cooperative and coordinated process that assures timely, cost-effective and environmentally sound transportation planning and project development based on concurrent multi-agency review.

MATE Task Force, 1999



Goals

- Expand stakeholder involvement to include communities & environmental groups
- Decisions are made collaboratively to address transportation and environmental protection priorities
- Focus on coordination during planning – early coordination equals greater environmental and community protection
- Build environmental avoidance and mitigation measures into project decisions

Agency	 Step 1: Transportation Planning Process	 Step 2: Scoping
State DOTs FHWA	<p>as NEPA, Section 106, Section 404, Section 4(f), land use policies, livable communities, etc.). FHWA Conformity Determination in cooperation with EPA. Circulate final planning level Purpose & Need Statement, if applicable. Request concurrence from agencies.</p>	<p>general transportation, environmental resource, & community issues. Identify preliminary study area with agencies and begin environmental inventory.</p> <p>land use policies, livable communities, etc.). Prepare Notice of Intent. Planning Level Purpose & Need Concurrence Point Send invitation to cooperating agencies. Formal notification of Section 106 project initiation. Start informal Section 7 consultation, if necessary.</p>
MPO	<p>as appropriate. Identify key priority projects in LRP, CMS (where applicable), and DOT/State agency programs.</p> <p>Develop planning level Purpose & Need Statements for priority projects with DOT. Complete LRP conformity determination.</p>	<p>Review project scope for consistency with planning level Purpose & Need Statement. Presentation with DOT on LRP to all stakeholders. Explain rationale for mode selection in LRP. Explain rationale for elimination of alternatives or options in LRP/CMS.</p>
All State & Federal Resource & Regulatory Agencies	<p>Promote coordination of transportation & land use planning. Identify information needed to expedite reviews at project stage. Provide existing environmental data to MPO's when available. Meet with MPO & DOT to discuss priority projects, and environmental concerns with LRP/TIP. Review & comment on planning level Purpose & Need Statement. Meeting with DOT to discuss comments on planning level Purpose & Need Statement. Concurrence or non-concurrence, if applicable. Initiate or Participate in conflict resolution.</p>	<p> At some point in process between LRP and prior to the ROD, a TIP Conformity Determination must be completed if applicable.</p> <p>transportation & environmental resource issues.</p> <p>Provide existing resource identification where available. Identify public involvement process. Review & comment on assessment methodologies. Confirm cooperating agency status.</p>
Specific Regulatory Agency Actions		Specific Regulatory Agency Actions
ACHP/ SHPO/ THPO	See All Agency Block	Coordinate with FHWA to identify consulting parties.
USACE	Participate in the Transportation Planning Process, as staffing resources become available.	Coordinate joint public involvement process.
EPA		aquifers.
USFWS	Participate in the Transportation Planning Process, as staffing resources become available.	Provide information on existing T&E species in study area. Provide evidence on habitat evaluation methodologies.
NMFS	NMFS will not likely participate at this early planning stage due to staff and budget constraints	



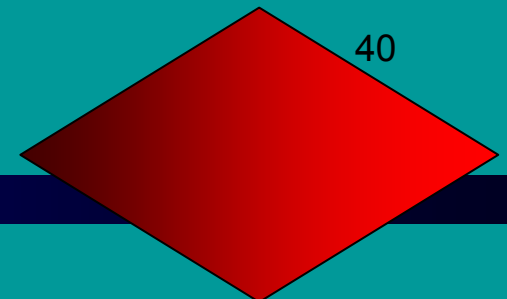
EIS's & Technology

- Advantages of “electronic” EIS's
 - CD-ROM's are cheaper to duplicate.
 - Easier to include colored and detailed maps
 - Electronic EIS's can be made available on Agency's website.
- NEPA Task Force is considering formalizing use of electronic EIS's
 - EIS's still need to be made available in paper versions
 - EPA requires paper EIS's for Official Filing.



GIS tools for EIS Preparation & Screening

- 5 states are using GIS to streamline transportation projects...
 - Texas
 - Arkansas
 - Washington
 - Florida
 - Mississippi





Texas

- **Building a GIS data inventory and analysis framework to support I-69**
- **GIS Baseline Database developed by EPA & funded by FHWA - Texas Division**
- **Funded by the Texas' federal-aid TEA-21 allocation - \$80,000**
- **EPA formed an I-69 work group to conduct a data needs assessment for the I-69 corridor.**



Texas

- **Project goals are:**
 - **to identify key environmental issues early in the planning process;**
 - **determine study corridors and alignments that avoid or minimize adverse impacts;**
 - **provide a consistent information base for the preparing and reviewing agencies;**
 - **foster communication with the public;**
 - **and, support integrated interagency reviews and concurrence.**



Washington State

- Providing technical support to the DOT through the Environmental GIS Workbench project.
- “Workbench” collects, maintains and helps WSDOT staff access the best available data for environmental analysis.
- WSDOT staff use the GIS information to flag environmental issues during project planning
- Workbench key to meeting goals of Environmental Permit Streamlining Act.
 - to reduce the permit processing time by 50%,
 - to reduce mitigation costs by 25%,
 - and to increase environmental benefits by 50%.



Florida

- GIS data inventory to support the Efficient Transportation Decision Making (ETDM) process.
- ETDM links land use, transportation & environmental resource planning to make better & faster transportation decisions.
- Access to comprehensive data through the GIS data inventory facilitates
 - early planning and decision making,
 - reduces the duplication of efforts by various agencies,
 - reduces the number of projects subject to detailed review,
 - and provides critical links among land use, transportation and environmental protection or preservation efforts.



Mississippi

- Building a GIS data inventory and analysis framework to support 3 of the I-69 segments.
- Partnership effort between Mississippi DOT and
 - Tennessee DOT
 - FHWA
 - EPA
 - Federal, State and local agencies with decision making responsibilities for the segments of I-69 all or partially in Mississippi.



Mississippi

- **Project goals are:**
 - to identify key environmental issues early in the planning process,
 - to identify study corridors and alignments that avoid or minimize adverse impacts,
 - to promote a consistent information base for the preparing and the reviewing agencies,
 - to support integrated interagency reviews and concurrences,
 - and to strengthen communication with the public.



Agency Roles



Agency Roles

- **Lead Federal Agency**
 - Agency with primary responsibility for preparing an EIS (EIA)
 - Request participation of other agencies
- **Joint Lead Agency**
 - A state agency with statewide jurisdiction & responsibility for the action
 - Example, Federal Highway Administration & a State Transportation Agency



Agency Roles

- **Cooperating Agency**

- Any non-lead federal agency with
 - Jurisdiction by Law – ability to approve, veto, or finance all or part of the proposed action
 - Special Expertise – agency with statutory responsibility, mission, or program experience relating to the proposal
- **Responsibility**
 - Participate early in the process
 - Develop information & provide staff support



Council on Environmental Quality

- Environmental policy development
- Oversight of federal agency NEPA compliance
- 3 member panel
- Located in the Executive Office of the President
- 8 specific duties & purposes



Council on Environmental Quality

Other Duties

- Issue NEPA regulations and guidance
 - *NEPA Implementing Regulations*
- Resolve Lead Agency disputes
- Mediate interagency disputes over environmental policy & project impacts
- Training and advice on NEPA compliance to other agencies
- Issues guidance on additional topics – Cumulative Impact Assessment, Cooperating Agency Status, etc



Council on Environmental Quality

- Assist & advise the President in preparing and annual environmental quality report
- Gather, analyze, and interpret information on conditions & trends in the quality of the environment
- Review & appraise federal agency compliance with the environmental policies of NEPA
- Develop and recommend national priorities to foster and promote the improvement of environmental quality



Council on Environmental Quality

- Conduct investigations, studies, surveys, research, and analysis relating to ecological systems and environmental quality
- Document and define changes and trends in the natural environment and their underlying causes
- Report at least once a year to the President on the condition of the environment
- Make recommendations to the President with respect to environmental policies and legislation.



Environmental Protection Agency

- **Administrative & Operational duties for filing and tracking of EISs**
 - EPA HQ – Office of Federal Activities is official recipient of all EISs
 - Reviews and records EISs for EPA's computer database
 - Establishes the beginning and ending dates when EISs are officially available to the public



Environmental Protection Agency

- **Administrative & Operational duties for filing and tracking of EISs (continued)**
 - Publishes the Notice of Availability in the Federal Register
 - Retains EISs in a central repository
 - Determines if comment periods can be lengthened or shortened for compelling national reasons



Environmental Protection Agency

- **Independent Review Responsibilities under Section 309 of the Clean Air Act**
 - Required to review & publicly comment on the environmental impacts of all major federal actions including proposed legislation, regulations, projects which receive federal funding, permits, or approvals
 - Ability to refer federal actions to CEQ which are found to be unsatisfactory from the standpoint of public health, welfare, or environmental quality



Results

- EIS's which utilize early coordination and GIS screening tools help to avoid "adverse" ratings...
 - LO - 13.6%
 - EC - 68.0%
 - EO - 17.6%
 - EU - 0.8%



Other Federal Agencies

- Must comply with NEPA & maintain sufficient staff & other resources
- Designate a person responsible for agency NEPA compliance
- Prepare procedures to supplement NEPA & CEQ NEPA Regulations
- Make diligent efforts to involve the public in preparing, implementing & amending their NEPA regulations
- Review Roles – other agencies can review EISs and refer proposals to CEQ



Public Participation



Public participation

- Agencies need to make effort to involve the public in preparing and implementing their NEPA procedures
- Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents
 - Publication in local newspapers
 - Direct Mailings to nearby property owners



Public Hearings

- Agencies shall hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency
- Criteria include:
 - Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing



Cross-cutting Environmental Laws & Environmental Justice



Other Environmental Laws

- US Laws regulate impacts to air, water, hazardous waste, historic resources, endangered species, etc
- Laws apply to actions of federal, state, local, and private entities
- Agencies with the authority to regulate actions under these laws may permit or approve actions The permit or approval decisions may require agencies to participate as a lead or cooperating agency under NEPA



Environmental Justice - E. O. 12898

Agency Responsibilities

Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.



Environmental Justice and NEPA

- **Analyze environmental effects (health, economic, social and effects on minority and/or low-income populations) of Federal actions**
- **Develop mitigation measures, in EAs EISs and RODs which address significant and adverse effects on low-income and/or minority populations.**



Environmental Justice and NEPA

- **Provide opportunities for community input in NEPA process**
- **Require EPA to ensure Federal agencies analyze environmental effects on low-income and/or minority populations**



Cumulative Impacts



EPA Guidance

- ✓ Published May 1999 - EPA Office of Federal Activities
- ✓ To be used with CEQ's 1997 Handbook -Considering Cumulative Effects Under NEPA
- ✓ General guidance for reviewers
 - ➔ information needed for analysis
 - ➔ suggestions for EPA comments



What are Cumulative Impacts ?

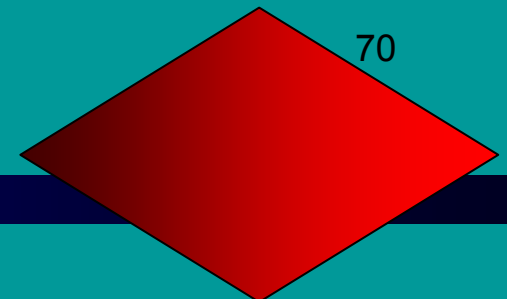
*“....total effects on a resource, ecosystem, human community of an **action** and all other activities affecting that resource, ecosystem or community...”*

“... concept of cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of effects of all actions over time.”



EPA Review Basics:

- **Assessment of cumulative impacts is the same as the assessment of direct impacts**
- **Ratings - determination of environmental impact of the action and adequacy of the analysis includes cumulative impacts**
- **Cumulative impacts can be the basis for adverse ratings**





EPA Review Basics:

- Cumulative Impact Assessment are not necessarily required in every EA or EIS
- Level of analysis and scope should be appropriate for the potential impacts, resources affected, project scale, and other factors
- Cumulative impact assessment entails a more extensive & broader review of possible effects



EPA Review Basics

- “Resources” includes ecological, community, historic, quality of life, human health, etc.
- Comments can include the identification of significant cumulative impacts affecting resources of concern, and
- Suggestions on mitigation measures to avoid impacts to the environment



Major Review Areas

- Resources & Ecosystem Components
 - *specific resources/ecological components affected by incremental effects of the proposed actions or other actions in the same geographic area*
- Geographical Boundaries
 - *area which includes resources potentially affected by the project*
 - *extending that area to include same or other resources affected by the combined impacts of the project and other actions*



Major Review Areas

- Time Period
 - Life of the project effects, or
 - time it takes for the resource to recover from the impacts
- Past, Present, & Reasonably Foreseeable Future Actions
 - consideration of level of environmental degradation
 - ongoing activities that are causing effects
 - trends for activities & impacts in the area

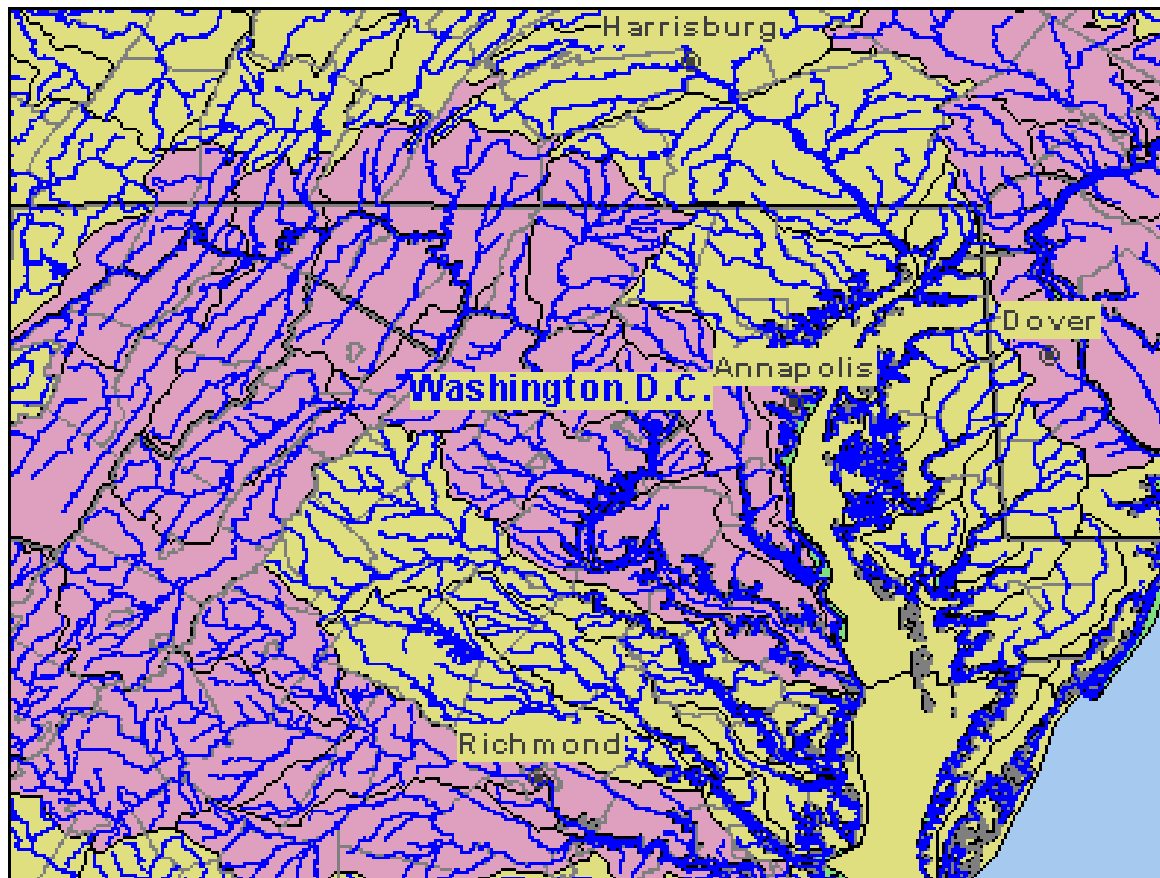


Major Review Areas

- Condition of the Environment
 - benchmark or baseline condition
 - relationship between the baseline resource condition and the relevant resource threshold determines the significance of the cumulative impact
- Thresholds for Assessing Degradation
 - “environmental indicators” of resource health
 - Environmental Monitoring & Assessment Program

Environmental Monitoring Assessment Project & Cumulative Impact Assessment

Trends & Thresholds



Wetland Loss Index - 1982-1992
and 1780s-1980s

- Low Level of Wetland Loss
- Moderate Level of Wetland Loss
- High Level of Wetland Loss
- Insufficient Data

Trends in Wetland Loss in the Washington, DC Region